



**24 CFR Part 402, 880, 881, 883, 884, 886, 891**

**[Docket No. FR–6320–A–01]**

**RIN 2502–AJ62**

**Federal Housing Administration (FHA): Section 8 Project-Based Rental Assistance: Standard Program Regulation and Renewal Contract; Advance Notice of Proposed Rulemaking and Request for Public Comment**

**AGENCY:** Office of the Assistant Secretary for Housing — Federal Housing Commissioner, Office of Multifamily Housing Programs, HUD.

**ACTION:** Advance notice of proposed rulemaking and request for public comment.

**SUMMARY:** The Office of Multifamily Housing Programs (MFH) seeks comments from the public regarding an initiative under which MFH, in partnership with owners, tenants, and other program stakeholders, would move toward a single Section 8 program regulation and single contract form pursuant to which the Secretary would renew project-based Section 8 Housing Assistance Payments (HAP) contracts under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). Section 524 authorizes the Secretary to establish the terms and conditions under which expiring contracts are renewed, subject to the requirements of section 524. Currently, the Secretary issues one of several section 524 renewal contracts, which is subject to one of seven Section 8 regulatory parts under which the original contract was issued, as well as other HUD regulations implementing section 524. To reduce regulatory complexities, MFH envisions promulgating a single Section 8 project-based rental assistance program regulation consisting of a standardized set of Section 8 program requirements and a single form of section 524 renewal contract.

**DATES:** *Comment Due Date:* Written comments must be received on or before **[Insert date 60 days after date of publication in the *Federal Register*]**.

**ADDRESSES:** Interested persons are invited to submit comments regarding this advance notice of proposed rulemaking. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

**1. Submission of Comments by Mail.** Members of the public may submit comments by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, D.C. 20410–0500. Due to security measures at all federal agencies, however, submission of comments by standard mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by standard mail be submitted at least two weeks in advance of the deadline. HUD will make all comments received by mail available to the public at <https://www.regulations.gov>.

**2. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

*Note:* To receive consideration as public comments, comments must be submitted through one of the two methods specified above. All submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

**3. Public Inspection of Public Comments.** All properly submitted comments and communications submitted to HUD are available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD

Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via teletypewriter (TTY) by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Jennifer Lavorel, Director, Program Administration Division, Office of Asset Management Portfolio Oversight, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C. 20410, telephone number 202–402–2515 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. BACKGROUND**

The Housing and Community Development Act of 1974, Pub. L. No. 93–383 (Aug. 22, 1974) amended the United States Housing Act of 1937 to add Section 8. Congress established a new project-based rental assistance (PBRA) program under which public housing agencies under contract with HUD were authorized to enter into Housing Assistance Payments (HAP) contracts on behalf of eligible low-income families occupying new, substantially rehabilitated, or existing rental units. In 1983, Congress repealed PBRA authority for new construction and substantial rehabilitation HAP contracts. As original HAP contracts began to expire, Congress enacted the Multifamily Assisted Housing Reform and Affordability Act of 1997, Pub. L. 105–65 (Oct. 27, 1997), which authorized the renewal of expiring HAP contracts. Section 524 of MAHRA authorizes the renewal of HAP contracts at market rents (524(a)(4)(c)) and above-market rents (524(a)(4)(B)), for contracts that are not subject to Mark-to-Market debt-restructuring.

Historically, MFH has issued HAP contracts under the seven regulatory parts listed below. Today, MFH issues renewal HAP contracts under MAHRA and continues to issue new

contracts under 24 CFR part 886 subpart C (Disposition of HUD-owned Projects) and under the Rental Assistance Demonstration (RAD) Project-Based Rental Assistance (PBRA) program.

The Section 8 statute requires that the HAP contract contain certain provisions, which means that the contracts MFH has issued over the years contain many similar provisions. Many contracts, however, contain other provisions that mirror the administrative requirements unique to each program's regulatory structure. Some programs (*flagged below*) have both old and new regulation contracts depending on when the notice of selection or initial application for the project was issued (for projects subject to Part 880, for example, "old regulation" contracts are those that received a notice of selection for their proposal between 1975 and November 5, 1979 and "new regulation" contracts received the notice of selection after November 5, 1979) as follows:

1. New Construction (24 CFR part 880) (*old and new*);
2. Substantial Rehabilitation (24 CFR part 881) (*old and new*);
3. State Housing Agencies (24 CFR part 883) (*old and new*);
4. New Construction financed under section 515 of the Housing Act of 1949 (24 CFR part 884);
5. Loan Management Set Aside Program (24 CFR part 886, subpart A);
6. Section 202/8 Program (24 CFR part 891, subpart E) (formerly part 885);
7. Disposition of HUD-Owned Projects (24 CFR part 886, subpart C);
8. RAD PBRA Program (RAD Notice, Appendix I).

The fundamental difference between old regulation and new regulation HAP contracts is that new regulation contracts impose a limitation on distributions for profit-motivated owners, as well as a requirement for residual receipts and a reserve for replacement account, whereas old regulation contracts generally do not. As another example, only new regulation HAP contracts typically require the owner to submit audited financial statements. These types of differences are carried forward when contracts are renewed, because the renewal contracts that HUD has used since the enactment of MAHRA state that they renew all the provisions of the expiring contract

(except for those pertaining to the identification of contract units by size and applicable contract rents, the amount of the monthly contract rents, contract rent adjustments, and any project account). The differing contract terms that result from this environment contribute to program complexities that could be reduced by instead having a standard renewal contract for all projects renewing under section 524. Adoption of a standard program regulation and contract would reduce the complexity faced by owners and tenants, in addition to HUD staff and contractors who are responsible for the administration and oversight of assisted projects.

HUD sees a clear benefit to moving toward a single program regulatory structure and a single program contract that sets forth all contract terms. HUD also recognizes that such contract terms may affect an owner's decision-making process in considering whether to request renewal. As a result, MFH is soliciting public comment on this initiative.

## II. REQUEST FOR PUBLIC COMMENT

This notice offers an opportunity for the public to provide input on the policies to be incorporated in a standard program regulation. MFH will consider all public comments received and subsequently issue a proposed rule. At that time, MFH will accept further public comments on the proposed standard program regulation. MFH is particularly interested in public comments addressing the following issues:

### **A. Reserve for Replacement**

(1) To ensure project capital needs are met, HUD intends to require an owner to establish a HUD-controlled reserve for replacement account, with initial and annual deposits determined by means of a periodic capital needs assessment (CNA). Are there circumstances under which HUD should consider waiving the need for a CNA and, if so, what circumstances and why?

(2) Should HUD provide an incentive to owners to use their own capital to establish and/or make continued deposits to a reserve for replacement account? If yes, how might the

incentive be structured? Should access to the incentive be tied to particular outcomes? If so, what outcomes?

## **B. Rehabilitation**

(3) Should the standard program regulation address requirements when a project assisted under section 524 is undergoing rehabilitation? If not, why not?

(4) If the standard regulation should address rehabilitation, what elements of rehabilitation should it cover (i.e., rehabilitation planning, tenant relocation, use of the pass-through)? Are there items that should be excluded from the regulation?

## **C. Project Finances**

(5) To ensure compliance with the reserve for replacement requirement, HUD intends to require all owners to submit annual financial reports. Please comment.

(6) Should the standard program regulation contain any limits on distributions? If not, how should HUD ensure that owners dedicate appropriate funds to operating and maintenance costs, and that taxpayer funds are not providing excessive compensation to owners?

## **D. HUD Enforcement**

(7) In the interest of providing clarity and transparency, HUD believes it would be beneficial to include in the regulation a subpart on enforcement, where the tools available to HUD and the circumstances under which such tools could be employed would be addressed. Please comment.

## **E. Vacancy Payments**

(8) What incentives could HUD use to encourage owners to re-lease vacant units quickly? Are there programmatic changes HUD might consider to encourage this result?

## **F. Scope**

(9) What topics should be addressed in a standard program regulation? For example, should the regulation be comprehensive, addressing all aspects of the program, ranging from renewal, management, occupancy, enforcement, and nondiscrimination, accessibility for

persons with disabilities and equal opportunity requirements? If not, how should the scope of the regulation be limited?

(10) HUD expects to incorporate into the regulation tenant rights equivalent to those that apply currently to tenants residing in projects assisted under RAD PBRA HAP contracts (as currently described in Notice H 2019–09/PIH 2019–23). Should the regulation contain a subpart addressing tenant rights and responsibilities? If so, what specific topics should the subpart cover?

#### **G. Renewal Options**

(11) Upon expiration, most contracts in MFH’s portfolio are eligible for renewal under section 524 of MAHRA. HUD intends to require renewal of such contracts by means of the standard program contract, so that as owners renew, they will be subject to the requirements laid out in the standard program regulation. Please comment.

#### **H. Other Comments**

(12) In addition to the subject areas described above, MFH welcomes any other input that interested parties believe would contribute to the successful design and implementation of a standard program regulation and contract, including input on education and outreach efforts that would assist owners in understanding and complying with requirements in the standard program regulation and contract.

Julia R. Gordon,  
Assistant Secretary for Housing – FHA  
Commissioner.

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